

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

**Reserved on: 21.11.2024**

**Pronounced on: 28.11.2024**

CRAA No. 55/2014

State through Senior Superintendent of Police Rajouri.

...Appellant(s)

Through: Mr. Bhanu Jasrotia, GA.

v/s

1. Gulzar Ahmed S/O Sh. Kala Khan
  2. Mst. Reshim Bi W/O Sh. Kala Khan
- Both residents of Village Kote Dhara  
Tehsil & District Rajouri.

...Respondent(s)

Through: Mr. Tayyab Javed Qureshi, Advocate.

**CORAM:**

**HON'BLE MRS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

**JUDGMENT**

1. The present appeal has been filed by the State against the judgment of acquittal dated 12-10-2013 passed by the learned Sessions Judge, Rajouri [“the trial Court”] by virtue of which the respondents have been acquitted for commission of offences under Sections 306/498-A RPC in FIR bearing No. 215/2006 registered at Police Station, Rajouri.

2. Before advertng to the grounds of challenge urged by the appellant in support of its appeal, it is necessary to notice brief resume of the prosecution case.

3. FIR No. 215/2006 was registered at Police Station, Rajouri on a telephonic information conveyed by HC Bagh Husain, informing the Police that one Nasim

Akhter W/O Gulzar Hussain had died in hospital due to consumption of some poisonous substance. The report was registered and ASI Abdul Rashid was deputed to conduct proceedings under Section 174 Cr.P.C, who, after taking the dead body into possession got the post-mortem conducted on the dead body and thereafter it was handed over to the legal heirs. The clothes of the dead body were seized and during recording of the statements it was found that deceased was married with Gulzar Ahmed about 2/3 years back. The accused persons, after some time after the marriage, starting ill-treating the deceased for bringing insufficient dowry and also started making demands for dowry in the shape of motorcycle and one kanal of land. The mother of the deceased being a poor lady could not fulfil the demands of the accused, as such, the accused started teasing, harassing and beating the deceased. The deceased was turned out of her house in the month of November, 2005 while demanding piece of land of one kanal at Darhali Bridge, Rajouri. However, the deceased returned to her matrimonial house after intervention of the Biradari members but she could not tolerate the ill-treatment meted out to her and committed suicide during the intervening night of 1<sup>st</sup>/2<sup>nd</sup> December, 2005 by consuming poison. The I.O, after completion of investigation, prepared the final report and presented it before the trial Court.

4. The trial Court, vide order dated 09-08-2006, framed charges against the respondents Gulzar Ahmed and Mst. Reshim Bi for offences under Sections 306/498-A RPC. The respondents denied the charges framed against them and claimed to be tried. With a view to prove the charges, the prosecution examined PWs Mushtaq Hussain, Zakir Hussain, Abdul Rashid, Mohd Amin, Mohd Shabir and Dr. Mehmood Hussain Bajar. The prosecution concluded its evidence and the incriminating circumstances, appearing in the prosecution evidence, were put

to the respondents and their statements under Section 342 CrPC were recorded. They denied the allegations levelled against them and the incriminating circumstances appearing against them in the prosecution evidence.

5. The trial Court heard the rival contentions and, having gone through the entire evidence on record, came to the conclusion that the prosecution had miserably failed to prove its case by leading clear, cogent, unimpeachable and trustworthy evidence. The trial Court, thus, dismissed the challan and acquitted the respondents of the offences they were charged for.

6. The appeal has been filed, *inter alia*, on the grounds that the judgment is bad in the eyes of law as the trial Court has failed to appreciate the prosecution evidence in true and proper perspective and has reached a conclusion which is contrary to the evidence brought on record; that the conclusion drawn by the trial court is palpably wrong based on erroneous view of the settled law and, as such, the judgment impugned has resulted in grave miscarriage of justice. It is submitted that despite the fact that there was sufficient material on record connecting the respondents with the commission of offence which they were charged for, yet, the trial Court acquitted them by having regard to minor contradictions in the statements of the prosecution witnesses.

7. Mr. Bhanu Jasrotia, GA, appearing for the appellant while assailing the judgment has reiterated the grounds taken in the memo of appeal and has submitted that the trial court has failed to appreciate the prosecution evidence in true and proper perspective and has reached a conclusion which is contrary to the evidence brought on record.

8. On the contrary, Mr. Tayyab Javed Qureshi, learned counsel for the respondents has vehemently argued that the prosecution has miserably failed to

prove its case and the witnesses have made contradictory statements which clearly prove that the respondents were roped in a case on false and frivolous grounds.

9. Heard learned counsel for the parties.

10. Before coming to the merits of the appeal, it would be appropriate to consider as to what is the scope of interference in an appeal against acquittal. The law on this aspect of the matter is no longer *res integra*. The Supreme Court in a series of judgments have settled that the scope of interference in an appeal against acquittal is limited and unless the High Court finds that the appreciation of the evidence made by the trial court is perverse, it cannot interfere with the finding of acquittal recorded by the trial court.

11. In **Nikhil Chandra Mondal vs. State of West Bengal** (Criminal Appeal No.2269 of 2010 decided on 3rd March, 2023), the Supreme Court has held that unless findings of the trial court are perverse or illegal, it is not permissible for the appellate court to interfere with the same. Similarly, in **Rajesh Prasad vs. State of Bihar and another**, (2022) 3 SCC 471, the Supreme Court has held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of innocence is further reinforced, reaffirmed and strengthened by the court. It was held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial court. The Hon'ble Supreme

Court in the case of “**Sambhaji Hindurao Deshmukh v. State of Maharashtra,**” reported in (2008) 11 SCC 186 has held as under:

“13. The principles relating to interference by the High Court in appeals against acquittal are well settled. While the High Court can review the entire evidence and reach its own conclusions, it will not interfere with the acquittal by the trial court unless there are strong reasons based on evidence which can dislodge the findings arrived at by the trial court, which were the basis for the acquittal. The High Court has to give due importance to the conclusions of the trial court, if they had been arrived at after proper appreciation of the evidence. The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt (vide Ganesh Bhavan Patel v. State of Maharashtra [(1978) 4 SCC 371 : 1979 SCC (Cri) 1], Babu v. State of U.P. [(1983) 2 SCC 21 : 1983 SCC (Cri) 332], Awadhesh v. State of M.P. [(1988) 2 SCC 557 : 1988 SCC (Cri) 361], Thanedar Singh v. State of M.P. [(2002) 1 SCC 487 : 2002 SCC (Cri) 153] and State of Rajasthan v. Raja Ram [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965] ). Keeping the said principles in view, we will examine the evidence to find out whether the findings of the trial court were not based on evidence and whether there was justification for the High Court to interfere with the decision of the trial court.”

12. Keeping the scope of interference in acquittal appeals in mind, as laid down in the judgment (supra), the contentions raised by the appellant in the present appeal have to be appreciated.

13. The prosecution has examined six out of ten listed witnesses and in order to properly appreciate the issues raised by the appellant, it would be beneficial to have a brief resume of the prosecution witnesses. **PW Mushtaq Hussain** has stated that deceased was his sister who was married to accused Gulzar Ahmed. The deceased had told him that she was being subjected to beating by the accused for not fulfilling their demand of dowry and finally the deceased committed suicide

by consuming some poisonous substance. However, in his cross examination he deposed that he is married at Kalakot and was residing in Kalakote during those days and that, when the deceased consumed poison at the residence of her husband, her husband, respondent No.1, was at his place of posting. There are residential houses of Ghulam Nabi, Munir Hussain and Maqbool Hussain near the house of the accused. He further stated that though a number of Panchayats were held in the village of the accused but neither the matter was reported to the Police nor to the Chowkidar or Numberdar of the village. He further stated that he has not made any statement to the police during the proceedings conducted under Section 174 Cr.P.C and his statement was recorded on 12-06-2006. The witness has further deposed that as he was in dilemma as such could not make his statement for seven months to the police.

**PW Abdul Rashid** has stated that the deceased was his cousin sister and her parents reside in Kalakote and he knows nothing about the case. He was declared hostile and on his cross examination he deposed that he has no knowledge about making the demand of dowry by the accused persons and about the strained relations between the deceased and the accused persons.

**PW Zakir Hussain** has deposed that he is the real brother of the deceased and after the marriage the respondents started making the demand of dowry and ill-treating the deceased. That respondent No.1 is serving in Indian Army and whenever the witness visited his house the respondent No.1 also ill-treated the deceased for bringing less dowry. In his cross examination the witness has stated that house of the accused is about 50 KMs away from the house of the witness. He stated that a Panchayat was also held but no complaint was made to any person for demand of dowry. He has further deposed that on the date of

occurrence the respondent No.1- Gulzar Ahmed was on his duty somewhere in Kashmir. He states that he has made the statement to Police after six months of death of the deceased although he approached the police several times.

**PW Mohd Amin** also did not support the prosecution story and categorically stated that respondent Gulzar is serving in Army and was having good relations with the deceased and that the accused/respondents have never ill-treated the deceased and made any demand of dowry from the deceased.

**PW Mohd Sharief** has deposed that on 01-12-2005 when he was passing through the house of the accused, he saw the accused quarrelling with the deceased and on the next day he heard about the death of the deceased by consuming poison. The accused were demanding one kanal of land at Darhali Bridge from the deceased. In his cross examination he deposed that his house is about 2 kilometres from the house of the accused and that accused-Gulzar Ahmed was not present at his house when the quarrel took place between the deceased and her mother-in-law.

**PW- Dr. Mehmood Hussain Bajar** stated that he conducted the post-mortem of the deceased and prepared the post-mortem report. He stated that his opinion is that the deceased died of 'organophosphorous' poisoning (dichlorovos compound) leading to asphexia. He further stated that he prepared the final report after getting the FSL report on 05-05-2006, however, there is no mention about sending of viscera to the FSL for chemical examination.

14. The only defect in the prosecution case is that the FIR was registered after a delay of six months and so were the statements of the prosecution witnesses, who are closely related to the deceased, recorded after inordinate delay of six/seven months but the prosecution has not been able to demonstrate as to why

the statement of the witnesses were recorded after inordinate delay. It is settled law that once statement of witnesses were recorded after inordinate delay and the delay is not explained, statements of those witnesses are doubtful. It becomes relevant particularly in view of the fact that the Investigating Officer has not been produced during the trial. Reliance in this behalf can be placed upon the decision of the Apex Court in case titled **“Shahid Khan vs. State of Rajasthan”** reported in 2016(1) Crimes 261(SC) and the relevant para is extracted as under:

**“11. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they are not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eye-witnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, does not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the Appellants. The High Court has failed to advert to the contentions raised by the Appellants and re-appreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the Appellants has not been proved beyond reasonable doubt.”**

15. The trial Court has rightly concluded that although prosecution has produced PWs Mushtaq Hussain and Zakir Hussain, the real brothers of the deceased, but they have not stated anything about the strained relations between the deceased and the accused persons. The accused Gulzar Ahmed, has also been stated to be serving in Army and posted somewhere in Kashmir on the date of occurrence. It has further been held by the trial Court that, the prosecution has not been able to prove by leading any cogent and reliable evidence that the deceased was subjected to cruelty or harassment by the accused persons soon before her death. That apart, PW Mohd Shabir has deliberately tried to show the presence of accused Gulzar Ahmed at his house on the date of occurrence, when PWs Mushtaq Ahmed and Zakir Hussain have categorically



stated that Gulzar Ahmed was not present in his house on the date of occurrence and was on his duty in Kashmir Valley. Thus the testimony of the related witnesses, namely, Mushtaq Hussain, Zakir Hussain and Mohd Shabir suffer from material contradictions and infirmities and does not inspire any confidence.

16. Viewed from any angle, the prosecution evidence falls short of proving the case against the respondents beyond reasonable doubt. The trial court has rightly appreciated the evidence on record and there is no perversity in the order of acquittal.

17. On the conspectus of evidence and material on record, the judgment of acquittal impugned in the instant appeal does not call for any interference. Otherwise also, the jurisdiction of the appellate court hearing an acquittal appeal is well circumscribed and where, on evaluation of evidence and material on record, two views are possible, the view which favours the accused has to be preferred.

18. Accordingly, the appeal is dismissed. Record along with a copy of this judgment be sent to the trial Court i.e the Court of Pr. District & Sessions Judge, Rajouri.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

**JAMMU:**  
28.11.2024  
Vinod

Whether the order is reportable: No